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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202572
Party	Defendant Valve Corporation
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Date	12/22/2011
Attachments	Applicant's Answer to Notice of Opposition.pdf (6 pages)(53755 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application No.: 85/102,245
Filed: August 6, 2010
Published: July 19, 2011 in the Official Gazette
Mark: DOTA

_____)	
BLIZZARD ENTERTAINMENT, INC.,)	
)	
Opposer,)	
)	Opposition No. 91202572
v.)	
)	
VALVE CORPORATION,)	
)	
Applicant.)	
_____)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Valve Corporation ("Valve" or "Applicant"), hereby answers Blizzard Entertainment, Inc.'s ("Blizzard" or "Opposer") Notice of Opposition dated November 16, 2011, as follows:

1. Valve admits that Blizzard purports to seek to prevent registration by Valve of the DOTA trademark. Valve denies the remainder of the averments in this paragraph.
2. Denied.
3. Valve admits that Blizzard is the distributor of popular video games, including the Warcraft®, World of Warcraft®, StarCraft® and Diablo® gaming franchises. Valve is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

4. Valve admits that Blizzard is the developer and distributor of Warcraft Games and certain add-on expansions to these games. Valve is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, it denies same

5. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph and, therefore, it denies the substance of the allegations contained in this paragraph.

6. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph and, therefore, it denies the substance of the allegations contained in this paragraph.

7. Valve admits that Blizzard typically includes the World Editor program with its Warcraft III game and that the World Editor allows users to create their own maps or levels, commonly referred to as “mods.” Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this remainder of this paragraph and, therefore, denies same.

8. Valve admits that Warcraft III is typically distributed with an End User License Agreement (“EULA”), that the EULA is displayed during the installation of Warcraft III, and that assent to the EULA is required in order to install Warcraft III. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

9. Valve admits that the EULA contains a non-exclusive license agreement. The terms of the EULA speak for themselves and no admission or denial regarding the legal effect of the terms of the EULA is required. Valve is without knowledge or information sufficient to form

a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

10. The terms of the EULA speak for themselves and no admission or denial regarding the legal effect of the terms of the EULA is required. Valve is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

11. Valve admits that DOTA is very popular. Valve admits that it is the successor-in-interest to all rights in DOTA, including trademark rights. Valve admits that the DOTA contains items known as the “Ancients.” Valve is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

12. Valve admits that the DOTA Mod was first developed in 2003 and that many versions of DOTA have been created and distributed by Valve’s predecessors-in-interest. Valve denies the remainder of the averments in this paragraph.

13. Valve admits that DOTA requires installation of Warcraft III. Valve denies the remainder of the averments in this paragraph.

14. Valve admits that millions of users around the world have downloaded and played DOTA and that playing DOTA requires the installation of Warcraft III. Valve denies the remainder of the averments in this paragraph.

15. Denied.

16. Denied.

17. Valve denies the use of DOTA marks by Valve and its predecessors in interest is under license from or for the benefit of Blizzard. Valve is without knowledge or information

sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph and, therefore, denies same.

18. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph and, therefore, denies same.

19. Admit that installation of Warcraft II is required in order to play DOTA. Valve denies the remainder of the averments in this paragraph.

20. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph and, therefore, denies same.

21. Valve is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph and, therefore, it denies the substance of the allegations contained in this paragraph.

22. Valve admits that it is a computer game developer and publisher, that on August 6, 2010, Valve filed with the United States Patent and Trademark Office Application Serial No. 85/102,245 to register the mark DOTA for “Computer game software; Electronic game software; Video game software.” Valve denies the remainder of the averments in this paragraph.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

AFFIRMATIVE DEFENSES

1. Opposer’s Notice of Opposition fails to state a claim upon which relief can be granted.

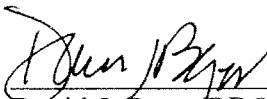
2. Opposer lacks standing to bring this proceeding.
3. Opposer's claims are barred by the doctrines of laches, estoppel, waiver, unclean hands, and/or acquiescence.
4. Opposer cannot claim exclusive rights in the DOTA mark.
5. Applicant's rights in the subject mark are senior to any rights claimed by Opposer.
6. Applicant reserves the right to amend its Answer to add additional or other defenses that cannot now be articulated due to Opposer's failure to particularize its claims and/or the need for further discovery regarding Opposer's claims.

WHEREFORE, Applicant, having fully and completely answered the Notice of Opposition, prays for judgment:

1. dismissing the Notice of Opposition with prejudice;
2. allowing Applicant's application to register on the Principal Register
3. granting Applicant such other and further relief as the Board deems just and proper.

Date: December 22, 2011

Respectfully submitted,



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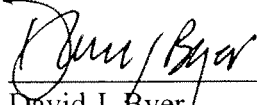
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on December 22, 2011 by first class mail and electronic mail upon the following counsel for Opposer Blizzard Entertainment, Inc.:

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